

KINGDOM OF CAMBODIA

NATION RELIGION KING



ក្រុមប្រឹក្សាពន្ធដារកម្ពុជា

THE ARBITRATION COUNCIL

Case number and name: 83/06 – Roo Hsing

Date of Award: 18 October 2006

ARBITRAL AWARD

(Issued under Article 313 of the Labour Law)

ARBITRATOR PANEL

Arbitrator chosen by the employer party:

ING SOTHY

Arbitrator chosen by the worker party:

LIV SOVANNA

Chair Arbitrator (chosen by the two Arbitrators):

KONG PHALLACK

DISPUTING PARTIES

1- Employer Party

Name : **Roo Hsing Garment Co., Ltd.**

Address : Tuol Sangkae village, Sangkat Tuol Sangkae, Khan Russey Keo,
Phnom Penh

Telephone : 012 830 901/862 523 Fax: N/A

Employer Representatives:

- | | |
|------------------------|-----------------------------|
| 1. Mr. Chou Chansak | Communications staff member |
| 2. Mr. Kisong Chandara | Administrative staff member |
| 3. Ms. Eung Vuoch Nai | Accountant |

2- Worker party

Name : **Khmer Youth Federation Trade Union (KYFTU) and workers of Roo Hsing Company**

Address : No. 34, Street 265, Sangkat Toeuk Laak 3, Khan Tuol Kork, Phnom Penh

Telephone : 011 975 670, 012 882 870, 012 1 602 763 Fax: N/A

Worker Representatives:

- | | |
|----------------------|-------------------------|
| 1. Mr. May Vathana | KYFTU Official |
| 2. Ms. Chea Socheata | Roo Hing Factory worker |
| 3. Ms. Men Sarim | Roo Hing Factory worker |
| 4. Ms. Vann Kim Yan | Roo Hing Factory worker |
| 5. Ms. Duch Nitum | Roo Hing Factory worker |
| 6. Ms. Chheng Thida | Roo Hing Factory worker |

ISSUES IN DISPUTE

(In the non-conciliation report)

- 1- The workers demanded that the company reimburse the medical check-up fee of 10,100 riel;
- 2- The workers demanded that the company maintain the attendance bonus of workers when they take three days of paid leave;
- 3- The workers demanded that overtime work should be voluntary. If the workers do not work overtime, there should not be resentment towards the workers;
- 4- The workers demanded that the company add one more paid leave day for those workers who have worked for three years;
- 5- The workers demanded that the company properly calculate the overtime work payment for workers and the review of those payments;
- 6- The workers demanded that the company set up a day-care center and a nursing room for breastfeeding in the premises of the company. If the company cannot build it, the company shall provide three 1.5 kilo cans of milk powder and US\$20 per month for day-care services;
- 7- The workers demanded that the company not deduct the workers' wages, if the workers' cards were lost or damaged;
- 8- The workers demanded that the company convert those who have completed the two-month probationary period to regular worker status;
- 9- The workers demanded that the company reimburse the workers' labour record fee of 7,000 riel;
- 10- The workers demanded that the company reimburse the membership fees deducted from the wages of the workers who did not assert membership in the Union and review these payments (for example for Khut Sreymom and Sieng Srey Tuy);
- 11- The workers demanded that the company provide female workers, who had just delivered babies, with one hour per day for breastfeeding or else provide them US\$20 per month;

- 12- The workers demanded that the company provide them with US\$20 incentive bonus per month when the workers agree to work overtime at the company's request;
- 13- The workers demanded that the company easily grant permission to the workers when they have emergency incidents;
- 14- The workers demanded that the company maintain their wages when the workers have a proper medical certificate from the public hospital;
- 15- The workers demanded that the company provide them with transportation whenever they work overtime for more than two hours;
- 16- The workers demanded that the company calculate their wage with reference to a formula of two plus one when the company requires them to work on holidays or Sundays.

JURISDICTION OF THE ARBITRATION COUNCIL

The Arbitration Council derives its power to make this Award from Chapter XII, Section 2B (Article 309 to 317) of the Labour Law (1997); the Prakas on the Arbitration Council 099/04; the Arbitration Council Procedural Rules which form an Annex to the same Prakas; and the Prakas on the Appointment of the Arbitration Council 099/06 (Fourth Term).

An attempt was made to conciliate the collective labour dispute that is the subject of this Award, as required by Chapter XII, Section 2(A) of the Labour Law. However, the conciliation hearing was unsuccessful, and the non-conciliation report No. 1391 dated 29 September 2006, was submitted to the Secretariat of the Arbitration Council on 29 September 2006.

HEARING AND SUMMARY OF PROCEDURE BEFORE THE ARBITRATION COUNCIL:

Place of Hearing : **The Arbitration Council**, Phnom Penh Centre, Building A,
Sothearos Blvd, Sangkat Tonle Bassac, Khan Chamkarmon,
Phnom Penh.

Date of the Hearing : - 5 October 2006 (from 2:00 to 4:00 p.m.)
- 12 October 2006 (from 2:30 to 5:30 p.m.)

Procedural Issues:

Having received the complaint from KYFTU on 31 August 2006 demanding that the company improve 16 issues related to working conditions, the Department of Labour Disputes designated its expert official to settle and conciliate the collective labour dispute, but no single issue was conciliated. The 16 non-conciliated issues were submitted to the Arbitration Council on 29 September 2006.

Having received the case, the Arbitration Council summoned the employer party and the KYFTU as well as the workers to attend a hearing on the 16 non-conciliated issues on 5 and 12 October 2006 at 2:00 p.m. Both parties were present at the two hearings set by the Arbitration Council.

At the first hearing on 5 October 2006, the employer party claimed that the representation of KYFTU in this case was illegal because (1) the Khmer Youth Federation Union in Roo Hsing Factory does not have a Registration Certificate; it has just applied for a certificate; (2) Mr. Chan Sokny, the Vice-President of the Khmer Youth Federation Union, is also one of the steering committee of the Cambodian Labour Union Federation (CLUF); (3) Some of the 28 workers, who were the complainants, had resigned from the company while some others had double signed.

To settle this matter, the Arbitration Council offered a compromise and asked the complainant workers to deliver a completed power of attorney document to the Khmer Youth Federation Trade Union (KYFTU) to be their legal representative in accordance with Clause 19 of the Prakas on the Arbitration Council at the second hearing on 12 October 12, 2006 at 2:00 p.m.

At the second hearing, only five out of the original 28 workers who were the complainants, authorized power of attorney to the Khmer Youth Federation Trade Union (KYFTU) and authorised them to be their representative at the hearing. At the hearing on that day, the Arbitration Council made a further attempt to conciliate the non-conciliated issues which resulted in nine issues being conciliated successfully; these were issues 3, 4, 5, 9, 10, 11, 13, 14, and 16. Therefore, in this Award, the Arbitration Council considers only issues 1, 2, 6, 7, 8, 12, and 15 based on the evidence and the findings of fact as follows:

EVIDENCE

Witness and experts besides the parties: N/A

Documents, exhibits and other evidence considered by the Arbitration Council

- a. Provided by the employer party:
 1. The power of attorney from the company dated 4 October 2006;
 2. Internal Work Rules of Roo Hsing Garment Ltd.;
 3. Agreement dated 17 August 2006;
 4. Resignation letter of Sok Chanthly, ID Card No. G 0337;
 5. Resignation letter of Lai Ratana, ID Card No. G 1633;
 6. Resignation letter of Keo Sorphorn, ID Card No. G 1713;
 7. Resignation letter of Laut Vanna, ID Card No. G 3553;
 8. Resignation letter of Chuon Sok Leang, ID Card No. G 0601;

9. Resignation letter of Suon Savai, ID Card No. G 1795;
 10. Resignation letter of Sorn Lon, ID Card No. G 3263;
 11. Resignation letter of Soeung Srey Phy, ID Card No. G 3379;
 12. Letter of the Khmer Youth Federation Trade Union dated 30 August 2006, requesting the settlement of the labour dispute in Roo Hsing Company;
 13. The Statute of Roo Hsing Garment Ltd;
 14. Business Registration Certificate of Roo Hsing Garment Ltd.
- b.** Provided by the worker party:
1. Power of attorney of workers in Roo Hsing Company dated 12 October 2006;
 2. Receipt of the application for Registration Certificate of the Khmer Youth Trade Union in Roo Hsing Company dated 18 September 2006;
 3. Letter No. 608 from the Khmer Youth Federation Trade Union dated 29 August 2006 notifying the election to select the steering committee of the Khmer Youth Trade Union in Roo Hsing Company.
- c.** Provided by the Ministry of Labour and Vocational Training:
1. Report No. 1391 dated 29 September 2006 on the collective labour dispute settlement in Roo Hsing Garment Company from the Department of Labour Disputes;
 2. Minute of the collective labour dispute conciliation at Roo Hsing Garment Company dated 18 September 2006.
- d.** Provided by the Secretariat of the Arbitration Council:
1. Invitation No. 399 dated 2 October 2006 to the worker party to attend the hearing;
 2. Invitation No. 400 dated 2 October 2006 to the employer party to attend the hearing.

FACTS

- Having examined the report on the collective labour dispute conciliation;
- Having listened to the testimonies from both the employer party and the worker party;
- Having reviewed other supplementary documents;

The Arbitration Council finds that:

- Roo Hsing Garment Ltd. is located in Tuol Sangkae village, Sangkat Tuol Sangkae, Khan Russey Keo, Phnom Penh and employs approximately 4,000 workers;

- The company has one Union namely the Cambodian Labour Union Federation (CLUF). The Khmer Youth Trade Union in Roo Hsing Ltd. has just applied for a registration certificate on 18 September 2006;
- Five workers in the Sewing Unit requested the Khmer Youth Federation Trade Union to be their representative at the Arbitral Hearing, concerning the above 16 issues in dispute. The five workers were not asked by other workers in the factory to be their representatives. The five workers include (1) Men Sarim, from the Sewing Unit, Group 1, Building A; (2) Chea Socheata, from the Sewing Unit, in Building C as an Assistant Team Leader of Mobile Team; (3) Vann Kim Yan, from the Sewing Unit, Group 3I, Building C; (4) Duch Nitum, from the Sewing Unit, Group K, Building A; and (5) Chheng Thida, from the Sewing Unit, Group K, Building A;
- The workers make their demands on all the issues in dispute on behalf of all the workers in the factory. The Arbitration Council finds that besides the five workers constituting a party to this dispute, no other workers authorized their power of attorney to the Khmer Youth Federation Trade Union (KYFTU) to represent them in order to settle this dispute.

Issue 1:

- Five workers demanded that the company reimburse the medical check fee of 10,100 riel;
 - Chea Socheata paid 10,100 riel when s/he had a medical check-up at the Occupational Health Department in December 2004;
 - Vann Kim Yan paid 10,100 riel when s/he had a medical check-up at the Occupational Health Department in May 2005;
 - Men Sarim had paid 10,100 riel when s/he had a medical check-up at the Occupational Health Department in March 2000;
 - Chheng Thida paid 10,100 riel when s/he had a medical check-up at the Occupational Health Department in June 2003;
 - Duch Nitum paid 10,100 riel when s/he had a medical check-up at the Occupational Health Department in 2002;
- The company did not agree to reimburse [the fee] arguing that this [medical check] was a requirement for recruitment as stated in the company's Internal Work Rules.

Issue 2:

- Among the five workers, only Vann Kim Yan took one day's leave with permission in 2005 and the company deducted his/her bonus;
- At the hearing, the company asserted that the current practice of the company is as follows:

1. When taking authorised sick leave with a medical certificate, the company maintains the worker's wages but deducts the bonuses;
2. Regarding leave for personal duty, the company maintains the worker's wages and bonuses, if they have worked for over one year. However, if they have worked for less than one year, the company will maintain the wage but deduct the bonuses;
3. If the leave was taken without permission, both wages and bonus will be deducted.

Issue 6:

- Among the five workers, only Chea Socheata has a three-year and four-month-old child;
- The company has not yet established a day-care centre and nursing room.

Issue 7:

- Among the five workers, none has lost or damaged their cards. The demand is intended for potential incidents.

Issue 8:

- Among the five workers, none is a probationary worker.

Issue 12:

- The workers demanded that the company provide them with US\$20 incentive per month when the workers agree to work overtime at the company's request because of exhaustion and motivation. The employer did not agree because the company cannot afford it.

Issue 15:

- Among the five workers, none has worked overtime for more than two hours. This demand is intended for potential extra hours of overtime work.

REASONS FOR DECISION

Before taking the 14 dispute issues into consideration, the Arbitration Council will consider whether or not the Arbitration Council has jurisdiction over this dispute.

In regard to jurisdiction, the Arbitration Council will generally abide by the decision of the Labour Inspector and the Ministry of Labour and Vocational Training, if [the Arbitration

Council] has no specific reason to object (see Arbitral Awards 10/03 - Jacqsintex, 07/05 - Coca Cola, 41/04 - Micasa, and 02/04 - Cambodiana Hotel).

Article 302 of the Labour Law stipulates, *"A collective labour dispute is any dispute that arises between one or more employers and a certain number of their staff over working conditions, the exercise of the recognized rights of professional organizations, the recognition of professional organizations within the enterprise, and issues regarding relations between employers and workers, and this dispute could jeopardize the effective operation of the enterprise or social peacefulness."*

In Award 10/03 - Jacqsintex, the Arbitration Council confirmed that *"to assert that a dispute is a collective one it is necessary to meet three requirements of the collective labour dispute as stated in Article 302 of the Labour Law. The three requirements include:*

- A- The dispute is between a number of workers and one or more employers;*
- B- The issues in dispute are related to working conditions, the exercise of the recognized rights of professional organizations, the recognition of professional organizations, or issues regarding relations between employers and workers ;*
- C- The dispute could jeopardize the effective operation of the enterprise or social peacefulness."*

In Awards 20/05 - Fortune, 57/06 - Evergreen, and 77/06 - PCCS, the Arbitration Council declined to consider the demands of the workers because the dispute did not meet requirement C. Similarly, in this case, requirement A and B are met because the complaint was lodged by five workers and the dispute is related to working conditions and the relationship between workers and employer. However, requirement C is not met because five workers cannot jeopardize the effective operation of the enterprise or social peace. The five workers are a very small number compared to the total number of 4,000 workers in the company. These workers are not skilled workers that the company could not do without even though they are all working in the Sewing Unit. In addition, amongst the seven issues in dispute, some of the issues have happened to only one out of the five workers and some other issues in dispute have not yet arisen in the company. Furthermore, at the hearing, the worker party did not present any evidence to confirm that this dispute could cause the enterprise not to operate effectively or would jeopardize the social peace (see Arbitral Awards 20/05 - Fortune, 57/06 - Evergreen and 77/06 - PCCS).

Based on the above explanation, the Arbitration Council considers that this dispute is not a collective labour dispute but an individual labour dispute, which shall be settled according to the procedures stipulated in Article 301 of the Labour Law.

According to Chapter 12, Section 2 of the Labour Law, the Arbitration Council only has the jurisdiction to consider collective labour disputes. Therefore, the Arbitration Council

has no jurisdiction over this dispute. As a result, the Arbitration Council declines to consider the seven demands of the five workers.

Based on the above facts, legal principles, and evidence, the Arbitration Council makes its decision as follows:

DECISION

Decline to consider the demands of the five workers.

TYPE OF AWARD: NON-BINDING AWARD

This Award will become binding after 8 days of the date of its notification unless one of the parties lodges a written opposition with the Secretariat of the Arbitration Council within this time period.

SIGNATURES OF MEMBERS OF THE ARBITRATION PANEL:

Arbitrator chosen by the employer party:

Name: **ING SOTHY**

Signature:

Arbitrator chosen by the worker party:

Name: **LIV SOVANNA**

Signature:

Chair Arbitrator (chosen by the two Arbitrators):

Name: **KONG PHALLACK**

Signature: